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Author(s): AHMAD ZAKI YAMANI
Source: *Islamic Studies*, Vol. 41, No. 1 (Spring 2002), pp. 5-34
Published by: Islamic Research Institute, International Islamic University, Islamabad
Stable URL: http://www.jstor.org/stable/20837162
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Islamic Studies 41:1 (2002) pp. 5–34

Social Justice in Islam*

AHMAD ZAKI YAMANI

Fourteen centuries ago when humanity was groping about in frightful darkness, God chose to light a flame in a relatively obscure part of the world, Arabia. This flame was destined, in the course of time, to illuminate the whole world. It provided the light which guided man to restore his freedom and dignity, and to establish an upright, virtuous and benevolent society committed to fostering justice and promoting the well-being of all humanity.

The emergence of a religion-based community-cum-state in the seventh century Arabia in consequence of the Prophet Muḥammad's teachings combined with his reform of both individuals and society was nothing short of a miracle. The Arabian society had, until then, measured the worth of people mainly in terms of their descent and lineage. It was a society in which slaves toiled miserably in service of their dissolute masters. In a matter of years, that society was transformed, becoming one in which people became equals of one another like the teeth of a comb.[1] This society was animated by such compassion and fellow feeling that its members seemed to have become

* The present article was written in the mid-sixties by Ahmad Zaki Yamani, a well-known scholar and lawyer of international fame and for long Saudi Arabia's Minister of Petroleum and Minerals. With this we are embarking on the publication of a new series consisting of selections of significant writings on Islam, especially in the twentieth century.

We are thankful to the author with whose permission the article is being published. *Islamic Studies* has added some references to those already given by the author with a view to enable the readers to identify the possible sources of the statements made in this article.

The first major work on the subject was by Sayyid Quṭb, *al-'Adāhah al-Ijtimā'iyyah fi 'l-Islām* (Cairo: Circa 1949). Its translation by John Hardie was published from Washington, DC in 1953. The theme of the book, 'social justice', continued to dominate the Islamic intellectual discourse during the greater part of the second half of the twentieth century. Ed.

[1] The expression "teeth of a comb" is derived from the following tradition from the Prophet (peace be on him): "People are equal like the teeth of a comb. There is no preference for an Arab over a non-Arab, indeed preference is on the basis of *taqwā*". See Muḥammad ibn Ismā'īl al-Ṣan'ānī, *Subul al-Salām*, ed., Muḥammad 'Abd al-'Azīz al-Khūlī (Beirut: Dār Iḥyā' al-Turāth al-'Arabī, 1379 AH), 3: 128.

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parts of a single body: whenever one part was afflicted with pain, the entire body shared the suffering.[2]

Does the historical experience of this people and its heritage, as the bearers of the last message of God, contain anything valuable for our own times? Does that experience offer any remedy for the ailments of the present-day world? We speak of the 'ailments of the present day world' for without any doubt the contemporary world is in a state of utter confusion and perplexity. A pitch-black darkness is staring it in the face, a darkness which scientific and technological advancements and industrial and technological developments have failed to dispel. Although man's inherent potentialities have been greatly developed, he does not enjoy true freedom and peace of mind. During the current century man has usually been denied his dignity due to the exploitation of the common man by *laissez faire* capitalism and the excesses and cruelties of vengeful and hate-sprouting communism.* Even though the contemporary world has tried many a system — capitalism, communism, fascism, socialism, etc. — class conflicts and animosity between man and man continue to plague humanity. In short, social justice has eluded the grasp of the contemporary man.

In the Muslim world too there seems hardly any other problem as important and as urgent as the task of establishing social justice. It is my firm conviction, however, that there is a great deal in the religious and cultural heritage and historical experience of Muslims which is of great relevance for the in this regard. This statement is not meant to make Muslims complacent about the gravity of the problems of our time, nor to create the illusion that all what is required for their solution is simply to urge people to follow Islamic principles. Far from that, a great deal of concerted effort is needed to work out a clear blueprint of change and reform. Such a blueprint should consist of a set of clearly defined objectives derived from our Islamic heritage. In the light of these objectives, a cogently-stated programme of action needs to be prepared, elucidating how these objectives could be achieved. All this should be reinforced by sincere devotion to God and an earnest resolve to do His will, regardless of the extent of sacrifice that this might require.

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[2] This is a paraphrase of a tradition from the Prophet (peace be on him) in which he declared all Muslims to be one organism: "The believers in their mutual compassion, love and sympathy are like a body: when one part suffers, the entire body shares [its suffering] by sleeplessness and fever". See Muḥammad ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Kitāb al-Adab, Bāb Raḥmat al-Nās wa al-Bahā'im.

* It may be pointed out that this paper was written by the learned author long before the awesome setback suffered by the Communist system in the late eighties and subsequently. Ed.

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I

SOCIAL JUSTICE AND PRIVATE PROPERTY

Social injustice has bedevilled man's life in the past, and continues do so today. Social injustice vitally affects the predicament of the individual. It tends to cramp and distort his personality and rob him of his freedom and dignity. In the name of collective welfare and public interest the initiative of the individual is stifled, his creative talents are shackled, his resourcefulness is killed. Thus, the full utilization of the individual's potential is thwarted. Indeed, that is what has generally happened under radical socialist regimes. On the other hand, under many a non-communist regime too, the individual is robbed of his freedom and dignity merely because he does not have a particular colour of the skin, or does not belong to a particular race, or does not profess a particular creed, or has not been born in a certain class. Thus a large section of the community becomes an outcast, which again prevents the full flowering of the talents of many people.

Social injustice can also afflict the whole society when the reins of individual ambitions and interests are let loose in such manner that the dictates of collective welfare and public interest are ignored. As a consequence, a small minority fattens at the expense of the masses of common people who are subjected to sordid exploitation. No wonder, we often see sheer hunger and starvation in the midst of opulence and affluence and appalling misery in the midst of prosperity. The pity is that all this exists at a time when man has established such a significant degree of control over the forces of nature that a great many afflictions of the past could have been turned into relics of the past.

When an attempt is made to identify the main causes of the present afflictions of man, some people are inclined to look at the institution of private property as the main cause of all social injustice. Also, since the rights and interests of the individual and the society are considered to be mutually opposed, it is extremely difficult for people to strike a balance between the two. Furthermore, when the problem is approached from a purely materialistic viewpoint and moral values are denied their primary position, or they are relegated to oblivion, self-interest becomes the directing force of human life. It is not surprising, then, that the striving to provide equality of income and earning to all — the avowed object of communism — has failed to establish social justice, the ideal floundering when an attempt was made to seriously put it into effect.

Contrary to this approach, justice in Islam consists of providing equal

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opportunities rather than equal incomes to people so that they may realise their potential to the maximum. The state comes into the picture only to ensure that no individuals are deprived of the opportunity to make use of their potential to the full; or else to prevent and root out the injustices caused by the wanton abuse of power. When a balanced socio-economic programme, such as the one propounded by Islam, is not put into effect, people's reactions to social injustice are channelled to radical and extremist directions. As a result, one form of injustice is replaced by another.

Islam attaches due importance to property, for a faulty attitude towards property can lead to the perpetration of much injustice and suffering. The underlying purpose of the Islamic approach is to establish a balance between the interest of the individual and that of the society. Islam permits the interest of the society to overweigh the interest of the individual only in those rare cases when it is impossible to combine it with the interest of the society. The justice which Islam seeks to establish is not fully realised, however, by merely establishing a right and equitable order of property relations. Islam goes beyond that and seeks to liberate human beings from the shackles of property-based relationships; the shackles that grossly restrict the freedom of human beings. Property is important but is not the only important thing in human life. It is essential that the concern for property should neither be allowed to create undesirable inequalities nor undermine the freedom and dignity of man. As long as private property contributes to man's self-fulfilment, it is perfectly all right. It should never be allowed, however, to become a cause of human misery. Hence, if any society seeks to establish justice, as enunciated by Islam, it must be guided by the moral and spiritual values that it propounds in order to be able to re-enact the miracle which was performed some fourteen centuries ago. The spiritual and moral vitality of Islam is essential to generate the dynamic idealism which would combat and overwhelm every form of wrong and injustice and establish peace, equity and benevolence. This would necessitate not only legislative enactments inspired by Islamic ideals and values, but also vigorous efforts aimed at changing the minds and hearts of people and implanting in them compassion, brotherhood, and a penchant for righteous conduct and benevolence.

In view of the above, I propose to discuss in the following pages the problem of individual rights in general, and the right to private property in particular, highlighting their bearing on social justice. I will also attempt to show what kind of equality should be practiced in an Islamic society, and the measures that need to be adopted in that connection. Likewise, I will discuss the problem of social security under an Islamic dispensation.

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II

ISLAMIC PERSPECTIVE ON PROPERTY

It will be evident from what follows that the Islamic standpoint regarding property is at once fair, reasonable and balanced; it is devoid of the various forms of extremism to which humanity has generally been exposed. In the first place, the right to property is duly recognised by Islam and its protection is considered vital for the protection of human life.[3] The rightful owner of a property has the right to use all means, including force if necessary, to safeguard it. If such a person is killed while fighting to safeguard his property, he is considered a martyr.[4] The state is also required to protect the properties of people — a principle which is reflected in the law that the hand which steals must be amputated.[5] So important is this right that usurpation is denounced as an act which provokes God's wrath.[6] The individual who earns something by legitimate means also has the right to use it lawfully, and none may impose undue restrictions on it.[7] People who earn well should also spend their earnings in a manner that would show the effect of God's grace on them.[8] Niggardliness is no less vehemently disapproved in Islam than extravagance: "And neither allow thy hand to remain shackled to thy neck, nor stretch it forth to the utmost limit [of thy capacity], lest thou find thyself blamed [by thy dependants], or even destitute" (17: 29). A man may invest his wealth lawfully in such manner that the interests of the community are not jeopardised, and when he dies, his wealth would revert to his heirs who are

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[3] Prophet (peace be on him) said: "Verily your blood and property are as sacred, as the sacredness of this day of yours, in this month of yours, in this city of yours, until you meet your Lord". See the sermon of the Prophet (peace be on him) on the occasion of the last *Ḥajj* performed by the Prophet (peace be on him). Ibid., Kitāb al-Ḥajj, Bāb al-Khuṭbah Ayyām Minā.

[4] The Prophet Muhammad (peace be on him) said: "He who is killed in defence of his property is a martyr". Ibid., Kitāb al-Maẓālim wa al-Ghaṣb, Bāb Man Qātala dūna Mālihi.

[5] "Now as for the man who steals and the woman who steals, cut off the hand of either of them in requital for what they have wrought, as a deterrent ordained by God: for God is almighty, wise" (Qur'ān 5: 38).

[6] The Prophet Muḥammad (peace be on him) said: "He who wrongfully takes the money of a Muslim shall face the wrath of God Almighty at the hour of his death". See Kitāb al-Mukthirīn min al-Ṣaḥābah, Bab Musnad 'Abd Allāh ibn Mas'ūd in Aḥmad ibn Ḥanbal, *Musnad Aḥmad* (Cairo: 1313 AH), 1: 377.

[7] This principle, stated in the Qur'ān, reads: Say: "Who is there to forbid the beauty which God has brought forth for His creatures, and the good things from among the means of sustenance?" Say: "They are [lawful] in the life of this world unto all who have attained to faith – to be theirs alone on Resurrection Day" (Qur'ān 7: 32).

[8] See Aḥmad ibn Ḥusayn al-Bayhaqī, *Sunan al-Bayhaqī al-Kubrā*, ed., Muḥammad 'Abd al-Qādir 'Atā' (Makkah: Maktabat Dār al-Bāz, 1994), 3: 271.

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related to him by blood,[9] a fact which is fully in consonance with human nature. By not recognising the law of primogeniture, Islam has devised an effective means that would continually prevent the concentration of wealth in a few hands.

In dealing with the problem of property and individual rights thereto, the starting-point of Islam is to guarantee to the individual the right to own and enjoy the fruits of his labour, thereby creating the conditions in which his potential is developed and utilised to the optimum. What is aimed at is the greatest good of the society without unduly injuring the rights and interests of individuals. Thus Islam seeks to establish a balance, as we have pointed out earlier, between the rights and interests of the individual and the society — a balance which is lacking in both the capitalist and communist systems prevailing in the world, as we shall see.

III

PROPERTY IS A TRUST

This emphasis on the right of the individual to property represents only one side of the coin. For this ownership has a specific social function and has not been granted merely to satisfy the acquisitive cravings of people. According to Islam, a person's true position as regards the ownership of property is not that of the real owner but that of a trustee. For all property, in the ultimate sense, belongs to God alone: "And unto God belongs all that is in the heavens and all that is on earth" (3: 109). If man can make use of anything of the universe it is because of God's sanction as stated in several verses of the Qur'ān including the following: "Believe in God and His Apostle, and spend on others out of that of which He has made you trustees" (57: 7). "And give them [their share] of the wealth of God which He has given you" (24: 33).

The Islamic concept in this regard is that the giver is only an intermediary who gives something to others out of what is truly God's property which has been made available to him as trust. This idea is the very core of the Islamic concept of property. At the practical level, however, this does not prevent the owner of a property from exercising the right of ownership unless he flagrantly violates the stipulations of the trust according to which the property was given to him. It would be apt to say that, according to the Islamic viewpoint, while the property belongs to God, its usufruct belongs to the

[9] The principle of inheritence has been elaborately described in the Qur'ān: "Men shall have a share in what parents and kinsfolk leave behind, and women shall have a share in what parents and kinsfolk leave behind, whether it be little or much – a share ordained by God [by God]" (4: 7).

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holder of that property in his capacity as its trustee as long as he abides by the terms laid down for its use by God, the real owner. The terms of this trusteeship do not limit the freedom of action of the trustee except when, as we shall see later, his actions run flagrantly counter to the interests of the community.

If, however, the holder of the property fails to fulfil his duty either owing to his mental frailty or insanity he will be prevented from exercising his property rights. "And do not entrust to those who are weak of judgment the possessions which God has placed in your charge for [their] support; but let them have their sustenance therefrom, and clothe them...", says the Qur'ān (4: 5). Likewise, if the holder of a property acts in a manner seriously detrimental to the interests of the community, although it is his duty to serve those interests, he will be prevented from the misuse of his position and will even be required to repair the damage he has caused, a subject which I will examine in some detail later. If the holder of that property dies without an heir, the property reverts to the community in its capacity as the original title-holder for whose benefit it is required to be used. It is because of this principle that the head of the Islamic state takes over the legacy of the heirless since he represents the community.[10]

When it comes to the actual exercise of the rights of property, the basic principle which underlies the Islamic law of property is the prevention of injury to others. The Qur'ān expressly forbids capriciousness in such matters as bequest, divorce, litigation, and guardianship.[11] The guiding consideration is the Islamic legal maxim: "None shall suffer, and none shall cause hurt".[12] On the grounds that the interests of the community override the interests of the individual, the Mālikī and Ḥanafī schools of law have delineated the criteria of capriciousness in the exercise of one's right of property with a detail unparalleled in any other legal system, whether past or present. These schools place the following three restrictions on the exercise of an individual's right of property:

(1) A right can only be exercised to achieve the purpose for which it was instituted. Mālik applied this principle to questions of personal law, particularly to

[10] Abū Yūsuf Ya'qūb ibn Ibrāhīm, *Kitāb al-Kharāj* (Cairo: al-Maṭba'ah al-Salafiyyah, 1382 AH), 185; 'Abd al-Wahhāb Khallāf, *al-Siyāsah al-Shar'iyyah fī al-Shu'ūn al-Dustūriyyah wa al-Khārijiyyah wa al-Māliyyah* (Kuwait: Dār al-Qalam, 1408 AH), 138–39.

[11] Concerning the right of bequest see Qur'ān 4: 12; concerning divorce see Qur'ān 2: 229; concerning litigation see Qur'ān 2: 188; concerning guardianship see Qur'ān 4: 2.

[12] Abū 'Abd Allāh Muḥammad ibn Yazīd ibn Mājah, *Sunan Ibn Mājah*, Abwāb al-Aḥkām, Bāb man Banā fī Ḥaqqihi mā Yaḍurru bi Jārih.

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questions of the guardianship of a father over the property of a minor son,[13] and his right to marry off a minor daughter against her will,[14] and the right of a guardian to object to the marriage of his adult daughter in order that she does not marry a person who is no match to her.[15] All these rights were granted to protect the interests of the persons under the care of their guardians. However, when the guardian grossly abuses his power, his acts are void and have no legal effect.[16]

Abū Ḥanifāh and his two disciples, viz. Abū Yūsuf and Muḥammad b. al-Ḥasan al-Shaybānī, applied the same principle to restrict the guardianship of the father or any other guardian over a minor, and to restrict the trustee's right to conclude marriage contracts under proxy owners. These rights were given in order to protect the interests of a minor, or of one's ward. In this connection I must refer to a difference in the views of Abū Ḥanifāh and his two illustrious disciples, Abū Yūsuf and Muḥammad ibn al-Ḥasan al-Shaybānī, concerning the application of this principle. Regarding the general rules governing the delegation of power to contract marriage, Abū Ḥanifāh is of the opinion that if a man asks someone to find for him a wife, and the man so asked arranges a marriage with a slave-girl, the marriage is valid. On the other hand, Abū Yūsuf and Shaybānī maintain that marrying anyone other than one's equals is not permissible.[17]

(2) The exercise of a right is considered illegal if it results in injury. Mālik applied this principle to regulate matters pertaining to pre-emption,[18] blood feuds,[19]

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[13] In Mālik's *al-Mudawwanah al-Kubrā*, we find the following report from Saḥnūn, on the authority of 'Abd al-Raḥmān ibn al-Qāsim: "I asked: 'Is it permissible that the house or the land of a youngster be shared by his father, or his guardian?' 'Abd al-Raḥmān ibn al-Qāsim said: "According to Mālik, it is permissible". I said: "And similarly merchandize (*wa kadhālika al-'urūḍ*) and all other things?" He said: "Yes, it is permissible according to Mālik". I said: "If a boy, who is under his father's guardianship, inherits a legacy from his mother or from someone else, and the father is partial in dividing the legacy, is it permissible for the father to be partial to others?" He said: "Mālik said that it is not permissible for a father to give the son either more or less than what is rightfully his due. Furthermore, partiality is not permissible according to Mālik". Mālik ibn Anas, *al-Mudawwanah al-Kubrā*, 16 vols. (Cairo: Maṭba'at al-Sa'ādah, 1323 AH), 14: 199.

[14] Ibid., 4: 5.

[15] Ibid., 20.

[16] Ibid., 5.

[17] Muḥammad ibn al-Ḥasan al-Shaybānī, *al-Jāmi' al-Ṣaghīr* (Karachi: Idārat al-Qur'ān wa al-'Ulūm al-Islāmiyyah, n.d.), 142.

[18] Mālik ibn Anas, *al-Mudawwanah al-Kubrā*, 14: 235. Saḥnūn says: I said: "If I have a piece of land next to other houses, and I want to build on it a bath, a bakery, or a quern, and my neighbours object to it: do they, in Mālik's doctrine, have the right to prevent me?" He ['Abd al-Raḥmān ibn al-Qāsim] said: "If any harm is done to your neighbours, such as smoke and the like, they have the right to prevent you, for Mālik has said that nobody should be permitted to harm his neighbours". I said: "Does the same apply to a smith, if he opens a shop there, or builds furnaces to melt gold and silver, or querns that injure the neighbour's walls, or drills a well, or uses [the plot as] a lavatory, right against his neighbour's walls?" He said: "It is so. Mālik has on more than one occasion said something to this effect about smoke, etc."

[19] Ibid., 15: 187.

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distribution of common property,[20] and ownership of virgin land.[21] Abū Ḥanifāh is of the opinion that if the exercise of a right in these matters leads to an injury to others, the persons concerned should be prevented from using their right.

Abū Ḥanifāh and his two disciples invoked this principle in determining the rights and duties of those who constructed more than one storey in a building and in determining whether an agent has the right to relinquish his power of attorney in the absence of the principal, and in deciding whether a businessman had the right to annul a contract with an individual labourer. In such cases the persons concerned must have a justifiable reason to exercise his right or else his action will be considered arbitrary and deemed void.[22]

(3) It is permissible to exercise one's right for obtaining a benefit for oneself, but not for harming others. The purpose of this principle is to prevent a neighbour from using his property in a way that would harm others without his obtaining a benefit. Mālik invoked this principle and explained that it was not permitted to claim rights of ownership to harm others.[23] The Ḥanafī jurists used this principle for the same purpose. Abū Yūsuf's well-known work, *al-Kharāj*, is replete with examples of its application, the most important being his view that the rights of both the individual and the state to reclaim virgin lands should be restrained if such reclamation would result in injury to people.[24]

This should clearly show the similarity between the doctrines of the Mālikī and Ḥanafī schools in regard to the right of property and its exercise. To put it succinctly, their view is that whenever a person acts in such manner that the rights of others are infringed, or the welfare of the society is adversely affected, such acts are legally void.

Among the founders of the schools of Islamic law, however, al-Shāfi'ī initially rejected this viewpoint altogether and uncompromisingly championed the doctrine that individuals have absolute rights which they might exercise in whichever way they want, even in ways which, while not beneficial to them, caused harm to others. He was forced, however, to moderate this radical position in deference to some Qur'ānic injunctions and well-authenticated

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[20] Ibid., 14: 222.

[21] Ibid., 15: 195.

[22] Abū Yūsuf, *Kitāb al-Kharāj*, 102–03.

[23] Mālik ibn Anas, *Al-Mudawwanah al-Kubrā*, 15: 194–95. Saḥnūn says: I said: "As an example: If I have a piece of land and behind it is a land belonging to somebody else, separating my land from a well which belongs to me, can my neighbours prevent me from crossing over to my well?" He ['Abd al-Raḥmān ibn al-Qāsim] said: "I heard Mālik say in answer to a question about a man who owned a plot of land surrounded by land tilled by others. [The question was]: "May he pass with his flock over the plants of the others?" Mālik said: "If this ruins their crops, they may prevent him. From this it becomes clear that they cannot prevent him if he does not ruin their crops".

[24] Abū Yūsuf, *Kitāb al-Kharāj*, 64.

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traditions.[25] Shāfi'ī's disciples, however, did not follow his doctrine and adopted, instead, the Ḥanafī-Mālikī doctrine on the question. One of the books of a well-known theologian and jurist of the Shāfi'ī school, al-Ghazālī, for instance, refutes the doctrines of al-Shāfi'ī; and in discussing matters relating to questions of personal status such as marriage, divorce, contracts, and pre-emption, he adopts a position in which the social aspect has received much greater emphasis.[26] Among the jurists of a relatively later period, the Ḥanbalī jurist, Ibn al-Qayyim, has played a very effective role in establishing the validity of the Ḥanafī-Mālikī doctrine on this question. He strongly refuted the formalistic doctrine of the Shāfi'ī jurists on the grounds that it would lead either to blatant injustice or to miscarriage of justice.[27]

By the 9th century AH/16th century CE, the doctrine prohibiting the abuse of rights had come to enjoy the consensus of Muslim jurists. This doctrine rests on two principles:

(1) a right must be exercised only in keeping with the purpose for which it was conferred;
(2) Abuse in the exercise of a right takes place when:

   (a) an act is deliberately aimed at injuring others;
   (b) the person concerned derives no benefit, but others are injured;
   (c) a general harm to the community is caused (e.g. by hoarding); and
   (d) others suffer grave injury.

This doctrine has continually influenced Islamic legal thinking. Its influence can be seen in modern times in various provisions of the famous *Majallat al-Aḥkām al-'Adliyyah* which was codified during the last decades of the nineteenth century.[28] The late Qādrī Pāshā of Egypt included several applications of this theory in his book *al-Aḥwāl al-'Ayniyyah*.[29] In 1948 the doctrine of the abuse of rights, as it is held in the Islamic *Sharī'ah*, was incorporated in the Egyptian Civil Code.

One of the Western jurists who was influenced by the Islamic doctrines concerning rights of ownership alongwith the restrictions placed on the

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[25] For this position of Muḥammad ibn Idrīs al-Shāfi'ī see his *al-Umm*, 7 vols. (Būlāq: 1321–25), 5: 189, 201 and 211.

[26] Abū Ḥāmid Muḥammad al-Ghazālī, *Iḥyā' 'Ulūm al-Dīn* (Beirut: Dār al-Ma'rifah, n.d.), 2: 24, 25, 35, 48, 66 and 213.

[27] Muḥammad ibn Qayyim al-Jawziyyah, *al-Ṭuruq al-Ḥukmiyyah fī al-Siyāsah al-Shar'iyyah* (Cairo: Maṭba'at al-Sunnah al-Muḥammadiyyah, 1372 AH), 254–264.

[28] See *Majallat al-Aḥkām al-'Adliyyah* (Hyderabad: Maṭba'at al-'Azīz, n.d.), 206–210, esp. section 1198–1212.

[29] Qādrī Pāshā, *al-Aḥwāl al-'Ayniyyah*, See sections 57 and 59.

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exercise of those rights was a French professor called Leon Duguit (1859–1928). He lived in Cairo for some time and worked as the Dean of the School of Law and maintained contacts with Egyptian scholars and jurists. He later formulated his theory, known as the theory of social solidarity, in which he defined property with reference to its social function and applied Islamic legal percepts in his analysis. His theory was widely accepted in the West. After the October 1917 Revolution of Russia, the Bolsheviks gradually realised that their original theory was unrealistic, which was the main reason for its stark failure. Five years after the October Revolution, Lenin adopted some features of the capitalist economy and tried to apply them as an extraordinary measure during the transitory phase prior to the establishment of full-fledged communism. He called it the New Economy Policy (NEP) and enforced a civil code in which the concept of law was derived from the works of Leon Duguit. Many Russian jurists, while commenting on the Soviet Civil Code, acknowledged this, although their written and recorded acknowledgements were later retracted. The first article of the Code states: "The law protects civil rights except in cases when they are used in a manner detrimental to their economic and social purposes".

Despite the *prima facie* similarity between the *Sharī'ah* and this article of the Soviet Code, the results were not identical. This is because the Communist approach is quite incongruous with the Islamic one, and the perspective from which the Russian Communists perceived the problem differed from the perspective of the *Sharī'ah*. The starting point of the Islamic Law is that property deserves protection. The Communists, on the contrary, started from the opposite pole: they negated the right of property, and then, under pressure, resorted to a recognition of its legality, provided it is used for good social and economic purposes.

What should particularly be noted is that the New Economic Policy adopted by Lenin in 1921 developed into a plan, and the trend of deviation from the original Communist programme persisted and in the course of time this deviation was reinforced. In USSR the Communist system suffered reverses year after year with the result that, except for a very short period of time, it has never been able to live up to its ideal of communism. From communism it moved on to socialism, from that to collectivistic socialism, and again from that to cooperative socialism, and so on and so forth [until the system broke down in the 1980s].*

Coming to Islam, we have seen that it permits the individual to own property and protects this right of the individual by all possible means. We have also seen, however, that Islam lays down certain restrictions on the

* The words in square brackets have been added. — Ed.

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exercise of property rights in the larger interests of the community. In fact, Islam goes even further than this and adopts a number of legislative measures in order to prevent the concentration of wealth in a few hands. It even makes this consideration a definite objective of Islamic fiscal policy. The Qur'ān explicitly states about one of its fiscal enactments that its purpose is that wealth "may not be [a benefit] going round and round among such of you as may [already] be rich" (59: 7). It is significant in this regard that Islam levied *zakāh* on capital. Hence, each year a portion of the capital is taken over and made available to the have-nots; not as a dole, but as the right of the have-nots. Likewise, the rules of inheritance are an effective means of dividing the legacy of the deceased, for the trend of the Islamic Law is to spread over the legacy to many, rather than to keep it concentrated in a few hands. It is also significant that although a person has only a limited right of testamentary bequest of his legacy, even this right cannot be abused so as to enable any of his legal heirs to receive an unduly large portion of the legacy since bequest may not be made in favour of any legal heir. If we add this to the restrictions which have been imposed by Islam on amassing wealth by declaring several money-making operations unlawful, we might perhaps be able to appreciate the balanced approach of Islam which combines respect for private property with concern for the larger interests of the community.

We have mentioned earlier that Islam grants man the right to both acquire and consume his property, and considers it desirable that if a person is wealthy, he should spend reasonably well on himself so that God's grace may be manifest.[30] This will also lead to a greater circulation of money. At the same time, Islam disapproves of extravagance, and the profligate behaviour of overly opulent people has been condemned in the Qur'ān as the cause of destruction of not only the opulent people who commit transgression, but of the whole nation. In fact the Qur'ān goes a step further and warns those who, though not overly opulent, would be destroyed along with the sinful sections of the society since they kept silent and tolerated the profligate behaviour of the opulent. The Qur'ān says: "But when [this has been done, and] it is Our will to destroy a community, We convey Our last warning to those of its people who have lost themselves entirely in the pursuit of pleasures; and [if] they [continue to] act sinfully, the sentence [of doom] passed on the community takes effect, and We break it to smithereens" (17: 16). This indicates that God destroys the opulent for their transgression and the others for keeping silent at their transgression. Luxury and opulence, however, are relative concepts and their connotation is bound to vary with changes in the time-space context. What Islam seems to disapprove of is (1) gross disparity in the standards of

[30] See p. 9, n.8 above.

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living within the same community; and (2) excessive ease and luxury which sap the moral qualities of the people, destroy their readiness to live a coarse, simple life within the parameters of law and morality even as they adversely affect a person's dignity and impair his judgment.

V

CAPITAL AND LABOUR

Islam has laid down the means by which a man may legally acquire property. According to Muslim jurists, a man's property rights are not derived from the qualities intrinsic in the things owned, but from the permission of the Lawgiver.

One of the most important means of acquiring property is the cultivation of virgin land. The Prophet said: "Virgin land (*'ādī 'l-arḍ*) belongs to God and His Prophet, and to you thereafter. If a person cultivates virgin land, the land becomes his. The occupant has no right [over the virgin land which he occupies but leaves unused] after the lapse of three years".[31] According to many jurists, virgin land may be brought under cultivation only with the permission of the ruler. This reflects the purpose of the Lawgiver in making proprietary rights subservient to the interests of the community.[32] God encourages individuals to bring virgin land under the plough in order to increase agricultural output and thus diffuse wealth and prosperity. If the purpose is defeated by keeping a piece of virgin land uncultivated, the occupant will forfeit his right after three years and his actual occupancy will not avail him.[33] The claim that a piece of land will remain the property of its occupant even if it lies unused was flatly denied by the Mālikī school which holds the view that in such a case the land would revert to its former status, that of virgin land.[34] This is significant for it clearly illustrates the underlying social and economic purpose of property in Islam.

There are other means, beside cultivating virgin land, through which property might be acquired. These are hunting, extraction of the earth's treasures, land tenure, and inheritance, and of course, exchange. However, one of the most important means of acquiring property is labour. This is evident

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[31] Abū Yūsuf, *Kitāb al-Kharāj*, 65.

[32] Ibid., 64.

[33] Ibid., 65. Abū Yūsuf based it on the verdict of 'Umar ibn al-Khaṭṭāb. Sālim ibn 'Abd Allāh and Sa'īd ibn al-Musayyab narrate that 'Umar ibn al-Khaṭṭāb said on the pulpit: "He who cultivated the virgin land it will belong to him. And he who keeps a land uncultivated does not have any right over it after three years".

[34] Mālik ibn Anas, *al-Mudawwanah al-Kubrā*, 15: 196.

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from God's urging man in the Qur'ān to work:

> And say [unto them, O Prophet]: "Act! And God will behold your deeds, and [so will] His Apostle, and the believers" (9: 105).
>
> Go about then, in all its regions, and partake of the sustenance which He provides (67: 15).
>
> The Prophet (peace be on him) said "God loves the believing craftsman".[35]
> "None of you has ever eaten a better food than what his hand has earned".[36]

The Prophet (peace be on him) was the noblest of all who earn their living by labour. He tended herds of sheep and worked as an agent of Khadījah in the latter's trading enterprise. The Caliphs and the Companions of the Prophet (peace be on him) also engaged in different occupations. A person who examines the different ways of ownership in Islam will find that, with the exception of land tenure and inheritance, all others pertain to labour, and there are weighty justifications even for these two exceptions. Money alone will not beget money unless it is combined with labour, the former sharing with the latter enterprise as well as risks attendant to it.

This brings out an important difference between Islam, on the one hand, and the socialist and capitalist systems on the other. Capitalism permits labour to become a source of acquiring property, grants capital the right to multiply by itself, upholding the dictum that money begets money. Communism denies that capital, either separately or in conjunction with labour, has any role in the production of wealth. According to the Communist theory, only labour creates wealth.[37] Islam adopts the middle road. On the one hand, it respects labour as much, if not more, than communism does, and rejects the claim that capital has the right to multiply by itself. Hence it prohibits usury in clear and strong terms. On the other hand, it opposes communism in so far as it seeks to bring capital and labour together in a cooperative venture to produce wealth and diffuse prosperity. In short, an attempt was made by Islam to prevent each of these factors — capital and labour — from dominating the other. The value of a commodity is measured in a fair manner by taking into account the contribution of both labour and capital, and not, as Marx maintains, labour

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[35] Abū 'l-Qāsim Sulaymān ibn Aḥmad al-Ṭabarānī, *al-Mu'jam al-Awsaṭ* (Riyāḍ: Maktabat al-Ma'ārif, 1405 AH), ḥadīth no. 4568.

[36] Muḥammad ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Kitāb al-Buyū', Bāb Kasb al-Rajul wa 'Amalihi Biyadih.

[37] Karl Marx, *Capital*, tr., Ben Fowkes (Harmondsworth: Penguin Books 1976), 1: ch. 8, 307–319.

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alone.

In spite of this, Islam views with disfavour, even if it might not legally prohibit, certain forms of partnership which give dividends without the corresponding involvement of labour, e.g. temporary crop-sharing contracts. It is related that 'Abd Allāh ibn 'Abbās said: "The Prophet once went out to a land blooming with production. He asked: 'Whose is it'? They said: 'X has leased it out'. He said: "It would have been better for him to give it to someone than to take a fixed rent".[38] The following statement has also come down from the Prophet (peace be on him): "He who has a piece of land should cultivate it or bequeath it to his brother: he should neither rent it nor lease it to him".[39] This point, in particular, seems worthy of a thorough study from the economic point of view for it might throw light on the different forms of relationship between labour and capital some of which Islam approves and others that it does not.

Islam also places certain restrictions on unlawful channels of money-making so as to protect the community from the acquisitiveness of individuals. It forbids and strongly denounces dishonesty in all transactions. It also prohibits hoarding because the hoarder undermines the freedom of trade and extorts money from people by causing spiral rise in the price of essential goods. When a society is secured against the evils of dishonesty and hoarding, it can enjoy the good effects of individual economic initiatives without fearing the pernicious consequences of excessive cupidity.

VI

THE DREAM OF JUSTICE AND EQUALITY

Man, who in his history has often suffered from injustice and oppression, has always dreamed of equality. People yearned for it in bygone days, but usually found it only in the books of philosophers. It was like a mirage which vanishes as you approach it.

The Messenger of God, Muḥammad ibn 'Abd Allāh (peace be on him) also strove to translate the dream of equality into practice. This changed the course of history, and established, for the first time, a society open to all mankind, a society which truly practiced equality instead of waxing eloquent about its promotion. The fact that a socio-economic order based on justice and equality remains more of a dream than a reality in the contemporary Muslim world is the fault of Muslims who have neglected the true teachings of Islam,

[38] Muḥammad ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Kitāb al-Hibah, Bāb Faḍl al-Manīḥah.
[39] Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, Kitāb al-Buyū', Bāb Kirā' al-Arḍ.

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and have thus deprived themselves and others of an important pillar of strength. As for Islam, it is an immortal religion whose springs can never dry up. Were we to return to it, we shall find in it nourishment for our souls. In it we shall also come to know the ways to establish justice in its best form as well as to establish an egalitarian system under which no superiority is accorded to anyone except on the grounds of personal merit such as righteous conduct. Muslims are religiously committed to practice justice and equality and their faith demands not merely the chanting of pious formulas, but an earnest struggle to transform the ideals of their faith into living realities of life.

Regardless of how hard the West tries, it will never succeed — neither its left nor its right — in establishing a society in which equality and justice prevail. There will always be glaring shortcomings to tell the story of the evil ingrained in people's souls, an evil which can be uprooted only by the teachings of Islam. History tells us how the dream of equality and justice came true in the time of the Prophet (peace be on him) and the early Caliphs, and from time to time thereafter. This achievement even fills non-Muslims with wonder. As for the present times, we find that in many parts of the world justice and equality have become handy slogans to exploit the gullible masses. In the name of these beautiful ideals, human beings are massacred, millions of innocent people are uprooted, and the struggle to get rid of the old chains quite often leads to the forging of new, heavier and more oppressive chains.

Equality, according to Marx, denotes the state in which all persons enjoy equal income and equal standards of living regardless of their abilities or actual work output. Were such an ideal to be realised, those who are more gifted and diligent would be prevented from living better than those who are less gifted and less diligent. Marx urged the establishment of a society based on the dictum: "From each according to his ability, to each according to his need". Communism met its first setback, however, when faced with the unpalatable realities of life and was led to renounce this kind of equality in favour of "equality of rights", which allows for varied fortunes to go along with varying abilities and amount of labour. It thus sought to establish a society on the basis of the dictum: "From each according to his ability, to each according to his work". Thus the original ideal was abandoned in the very first years of the Communist revolution.

As for Islam, the equality which it envisions denotes equality not in a narrow, material sense. This equality also encompasses the souls of Muslims. For Islam liberates the souls of people from all forms of servitude, raises their moral standards, and refines their feelings with the result that every Muslim acquainted with the basic concepts of Islam considers himself to be the brother of every other Muslim and fears none except God. This kind of equality —

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equality at the psychological level — has been altogether ignored by the West. It is, however, precisely this kind of equality which is the key to the success which crowned the struggle of early Muslims when they earnestly strove to realise that ideal.

The starting point for Muslims is their absolute faith in their Lord Who grants life as well as causes death, Who confers His bounties as well as withholds them and exercises total control over their destiny. Besides, no intermediary is recognised between man and God. Everyone, regardless of how exalted or low he might be, is His servant. The Qur'ān emphasises this absolute dependence of man on God and brings it out even in matters relating to the prophets. Since Muslims hold the beliefs such as those mentioned above, a direct nexus is established between the weak, mortal self of the believer and his Lord — God, the Almighty, the Compassionate. It is from this belief that a Muslim derives inspiration and strength which make him feel equal to every other human being in the sight of God. Islam emphasises this direct relationship between the frail human and the Almighty, albeit Merciful God, which is evident from a number of verses of the Qur'ān.[40]

When a Muslim liberates himself from the fear of poverty, he is able to do so because he puts his trust in God, the generous Provider of all. When he liberates himself from subjection to the holder of position and power, he is able to do so because of his belief that God is the only Lord, the only Sovereign, Who alone confers power on whomsoever He wills and strips of power whomsoever He wills (Qur'ān 3: 26). And if the spirit of a Muslim transcends above the fear of death it is because he knows that God alone grants life and causes death.[41] When these beliefs strike roots in the hearts of Muslims, their society is able to overcome the first obstacles in the way of true equality. It is then that Islamic Law begins to play its role in producing a community which has been characterized by the Qur'ān as the "best community that has ever been brought forth for [the good of] mankind" (3: 110).

The Qur'ān is replete with verses which categorically affirm the principle of equality:

> O men! Behold, We have created you all out of a male and a female, and have made you into nations and tribes, so that you might come to know one another. Verily, the nobles of you in the sight of God is the one who is most deeply conscious of Him (49: 13).
>
> For, it is neither your riches nor your children that can bring you nearer to Us:

[40] See the Qur'ān, especially 39: 53 and 2: 86.

[41] See the Qur'ān, for example 3: 156; 7: 158; 9: 116; 23: 80; 40: 68; 42: 9; 44: 8; 58: 2.

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> only he who attains to faith and does what is right and just [comes near unto Us]; and it is [such as] these whom multiple recompense awaits for all that they have done; and it is they who shall dwell secure in the mansions [of paradise] (34: 37).

The mission of Muḥammad (peace be on him) was to bring about a revolution that would undermine the foundations of the society that was based on discrimination between masters and slaves. He raised the position of slaves and made them stand shoulder-to-shoulder with their masters. This infuriated their overlords. Abū Jahl, for instance, protested to the Prophet (peace be on him): "Did you, O Muḥammad, come to make the lowly Ibn Sumayyah an equal of the noble al-Walīd?" Muḥammad (peace be on him) answered: "Yes, both are sons of Adam, and Adam was from clay". Abū Jahl got angry and cried out: "Will you make them our equals when they are our slaves and clients?" The Prophet (peace be on him) firmly and confidently said 'yes' to that and recited the Qur'ānic verse: "He will cause them to accede to power on earth, even as He caused [some of] those who lived before them to accede to it, and that, of a certainty, He will firmly establish for them the religion which He has been pleased to bestow to them" (24: 55).

This statement of the Prophet (peace be on him) was not sheer verbosity, a rhetorical statement devoid of the intent to implement it. It was, instead, a mandatory order of the Creator, and was thus faithfully put into effect by the Prophet (peace be on him) himself as well as by his Companions. In deference to the Prophet's desire, his own cousin, Zaynab bint Jaḥsh, was married, despite her noble lineage, to his freedman, Zayd.[42] This act is very significant since at that time marriage was the greatest criterion of true equality in the Arab society. Moreover, when the Prophet (peace be on him) joined his followers in Madīnah into pairs of brethren-in-faith, he made his uncle, Ḥamzah, the brother of his freedman, Zayd.[43] Likewise, he made Abū Bakr the brother of Khārijah; and Khālid ibn Ruwayḥah the brother of Bilāl ibn Abī Rabāḥ.[44] He even placed Zayd, and at a later date, Zayd's son Usāmah, at the head of the Muslim army, a majority of which consisted of eminent Muhājirūn (the Emigrants) and Anṣār (the Helpers).[45] After a few years Caliph 'Umar ibn al-Khaṭṭāb expressed the opinion that had Sālim, the freedman of Abū Ḥudhayfah, been alive he would have preferred him to all others and

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[42] Abū 'Abd Allāh Muḥammad ibn Aḥmad al-Qurṭubī, *al-Jāmi' li Aḥkām al-Qur'ān* (Cairo: Maṭba'at Dār al-Kutub al-Miṣriyyah, 1364 AH.), 14: 186–87.

[43] Muḥammad Ḥusayn Haykal, *Ḥayāt Muḥammad*, 7th ed. (Cairo: Dār al-Qalam, c. 1935), 223.

[44] Ibid.

[45] Muḥammad ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Kitab al-Maghāzī, Bāb Ba'th al-Nabī Usāmah ibn Zayd fī Maraḍihi alladhī tuwuffiyah fīh, and Bāb Ghazwat Zayd ibn Ḥārithah; Muḥammad Ḥusayn Haykal, *al-Ṣiddīq Abū Bakr* (Cairo: Maṭba'at Miṣr, 1377/1957), 101–103.

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appointed him his successor as Caliph.[46]

The Prophet (peace be on him) by his own conduct, set the most magnificent example of equality. Once a man called 'Ukāshah came to him and claimed that the Prophet (peace be on him) had once struck him with a whip on his back and shoulder, and that he should be allowed to take revenge for the wrong done to him. The Prophet (peace be on him) answered that he did not recollect that he had done so. The man, however, persisted in his claim. The Prophet (peace be on him) then asked him to get even with him by striking on his back and shoulder. The plaintiff however, burst into tears, fell prostrate, and said: "By Allāh, O Messenger of Allāh, you never hit me. I just wanted to test you".[47]

Likewise, a Jew once came to the Prophet (peace be on him) and fiercely insisted on the repayment of the amount borrowed by the latter before the scheduled time of repayment. He even taunted the Prophet's family for habitually delaying the repayment of debts. The Prophet's Companions were hurt by these insulting remarks and came forth with the intent to beat him up. Placing himself between them, the Prophet (peace be on him) merely said: "Let him go. Whoever has a due claim has the right to speak [harshly]"[48]

The Prophet's successor, Abū Bakr, also left behind very lofty examples of equality. He walked on foot on the outskirts of Madīnah to bid farewell to Usāmah. Usāmah, who was mounted, felt embarrassed, and cried out: "O Caliph of the Messenger of God, either you will mount or I will dismount". But Abū Bakr neither mounted, nor allowed Usāmah to dismount.[49]

Caliph 'Umar ibn al-Khaṭṭāb is also noted for his concern for equality. Once he ordered his own governor to be whipped a hundred lashes because he had flogged a person as many times. The governor, 'Amr ibn al-'Āṣ, the conqueror of Egypt, was only spared because the flogged man accepted 200 dinars — two dinars for each lash.[50] 'Alī, the fourth Caliph, gave a very adequate expression to this important principle of Islam when he admonished: "Don't be the slave of others for God has made you free".[51]

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[46] Aḥmad ibn Ḥanbal, *Musnad Aḥmad*, Musnad al-'Asharah al-Mubashsharīn bi al-Jannah, Bāb Awwal Musnad 'Umar ibn al-Khaṭṭāb, 1: 20; Muḥammad ibn Sa'd, *al-Ṭabaqāt al-Kubrā* (Beirut: Dār Ṣādir, n.d.), 3: 343.

[47] See Abū 'l-Qāsim Sulaymān ibn Aḥmad al-Ṭabarānī, *al-Mu'jam al-Kabīr*, ed., Ḥamdī ibn 'Abd al-Majīd al-Salafī (Mūṣal: Maktabat al-'Ulūm wa al-Ḥikam, 1983) 3: 59–61.

[48] Aḥmad ibn Ḥanbal, *Musnad Aḥmad*, Kitāb Bāqī Musnad al-Mukthirīn, Bāb Bāqī Musnad al-Sābiq, 2: 456.

[49] Muḥammad Ḥusayn Haykal, *al-Ṣiddīq Abū Bakr*, 105.

[50] Muḥammad ibn Sa'd, *al-Ṭabaqāt al-Kubrā*, 3: 293–94.

[51] See Muḥammad Muḥyī 'l-Dīn 'Abd al-Ḥamīd, ed., *Nahj al-Balāghah: Sharḥ Muhammad 'Abduh* (Cairo: Maṭba'at al-Istiqāmah, n.d.), 3: 57.

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These are just a few out of a very large number of examples which illustrate the realisation of the principle of equality in Muslim society. Islam, which declared all Muslims to be brethren, united their hearts, and made them equal before law. Only one's action, and nothing else, was considered to be of any avail. "And that naught shall be accounted unto man but what he is striving for" (Qur'ān 53: 39). "And no bearer of burdens shall be made to bear another's burden" (Qur'ān 35: 18).

VII

SLAVERY AND GENDER EQUALITY

Some people criticise Islam for sanctioning slavery. Such people forget that it is up until recently that slavery was in vogue in the greater part of the world, and it was not before many wars were fought and much blood was shed that it was abolished. The fact, however, is that Islam did not sanction slavery. At the time of the advent of Islam, slavery occupied a position of vital importance in the socio-economic structure obtaining in the Arabian Peninsula, let alone in other parts of the world. What Islam did was to introduce ideas and institutions which virtually ensured a gradual abolition of slavery. Islam narrowed down the door of slavery although it did not close it altogether. It also elevated the position of the slaves, making them equals of free men in the sight of God, as well as in respect of a great number of social rights. It also laid down the rule that a slave could buy his freedom from his own earnings, and even made the emancipation of slaves one of the items of the expenditure of the state treasury, as well as a means of atonement for a number of sins that individuals might commit. Were it not for the deflection of Islamic society from the path prescribed by the *Sharī'ah*, slavery would have been wiped out before long through the means laid down by God and His Prophet (peace be on him). Islam, however, placed the freedmen in the highest positions so that quite a few of them became rulers, commanders, scholars and judges. If the I have narrated earlier an incident regarding Sālim, the freedman of Abū Ḥudhayfah. Now, if Sālim had not died prematurely, he might have succeeded 'Umar to the caliphate.[52]

In the same way, to blame Islam for inequality between the sexes, shows both ignorance and malice. No system of life before the advent of Islam upheld equality between men and women. It is Islam that made them equals in the sight of God:

[52] See p. 22 above.

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> ... whereas anyone – be it man or woman – who does [whatever he can] of good deeds and is a believer withal, shall enter paradise, and shall not be wronged by as much as [would fill] the groove of a date-stone (Qur'ān 4: 124).
>
> As for anyone – be it man or woman – who does righteous deeds, and is a believer withal – him shall We most certainly cause to live a good life; and most certainly shall We grant unto such as these their reward in accordance with the best that they ever did (Qur'ān 16: 97).
>
> And thus does their Sustainer answer their prayer: "I shall not lose sight of the labour of any of you who labours [in My way], be it man or woman" (Qur'ān 3: 195).

Islam made men and women equal in civil rights and in the freedom of action. Most other social systems had not done this in the past, and they still deny these rights to a married woman. As for Islam, the basic principle is: "Men shall have a benefit from what they earn, and women shall have a benefit from what they earn" (Qur'ān 4: 32).

Islam does not permit the preference of men over woman except in a few counted instances, and that too on account of the difference in the extent of their inherent capacities and obligations. When Islam prescribed that men be assigned twice the inheritance of women, it also imposed on men the obligation to maintain their spouses, in fact, to maintain all members of their family. This is a duty from which women are exempt. The obligation with which men were encumbered required that some privileges be exclusively bestowed upon men so as to create a balance between the two, particularly since a woman's livelihood is guaranteed by men under all conditions — both before and after she is married, and even after she is widowed. Since women have to shoulder the duties of motherhood — a burden from which men are free — the latter are required to shoulder the major part of the social and economic responsibilities for which they are better suited, both physically and emotionally. The male is, therefore, the head of his family. This does not detract from the value of women in human life. They are richly endowed with highly valuable qualities. The Prophet (peace be on him) directed his followers in his address to the Last Pilgrimage to take good care of the womenfolk and to treat them well. He declared them to be a trust placed on the shoulders of men, and made God a witness over that.[53]

It would be pertinent to recall that when Islam enunciated the principle of essential equality between men and women, it was not because of any feminist agitation or because of the pressure of men who would like to exploit

[53] Abū Dāwūd al-Sajistānī, *Sunan Abū Dāwūd*, Kitab al-Manāsik, Bāb Ṣifat Ḥajjat al-Nabī.

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this so-called gender equality to gratify their carnal desires. Islam gave women an honourable position on the grounds of principle. Thus, it prevented the interests of women from being placed at the bargaining counter. The fact is that Islam endowed women with a number of rights some fourteen centuries ago which were not granted to them by modern Western states such as Britain and France up until the end of the Second World War. Now, if in some Muslim societies there is a tendency to keep women suppressed and paralysed, the source for that is to be sought in the peculiar socio-cultural traditions of those societies rather than in the teachings of Islam.

VIII

MUTUALITY OF RIGHTS AND OBLIGATIONS

To complete this radiant picture of equality, we would like to refer to a characterestic of the Islamic society, namely, that it is based on mutuality of rights and obligations. Islam essentially envisions a society in which all members have, broadly speaking, the same orientation. The individuals who make up this society are like bricks, each of which supports the other. Islam not only champions equality and freedom but also lays down obligations on all towards the society in order to bring about a balance. It is as a result of this combination of concern for rights and obligations that there comes into being in the words of the Qur'ān the "best community" for the service of all mankind — the community which is required to bid all what is good and forbid all what is evil (3: 110).

The responsibility which Islam assigns to individuals towards the society and which rests on the principle of mutuality, and which varies from person to person, embraces a variety of obligations. Every individual has been made responsible for the purification and proper growth of his soul: "But unto him who shall have stood in fear of his Sustainer's Presence, and held back his inner self from base desires, paradise will truly be the goal" (Qur'ān 79: 40-41). The individual has also been made responsible to safeguard himself against harm: "And let not your own hands throw you into destruction" (Qur'ān 2: 195). Thus Islam has the distinction of declaring suicide a sin. The individual is also responsible for providing himself with the means of sustaining a good worldly life: "Seek instead, by means of what God has granted thee, [the good of] the life to come, without forgetting withal, thine own [rightful] share in this world" (Qur'ān 28: 77). Man is also required to educate himself and increase his knowledge; in fact, seeking knowledge is the duty of every

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Muslim.[54] The individual must also work to earn his living, and also bear financial responsibility *vis-à-vis* his family and close relatives.

The family in Islam is considered an extremely important institution, and Islamic laws which seek to protect this institution are head and shoulder above the provisions in other legal systems. Islam lays down, in the first place, that the parents be treated with kindness (Qur'ān 2: 83). It also lays down the principle of mutual assistance in the relationship between blood relatives. "And they who are [thus]closely related have the highest claim on one another in [accordance with] God's decree". (Qur'ān 8: 75). "And the [divorced] mothers may nurse their children for two whole years... and it is incumbent upon him who has begotten the child to provide in a fair manner for their sustenance and clothing" (Qur'ān 2: 233). Thus, a person who is incapacitated from earning livelihood on account of age, disease or unemployment has a rightful claim on the surplus wealth of his more prosperous relatives. These precepts of Islam stem from a recognition of the importance of the institution of the family. For if this institution were to be destroyed, that would spell disaster for the society as a whole.

The area of a man's responsibility extends even beyond the confines of the family. The basic principle is that the individual has obligations towards the community and hence he should always be concerned with the promotion of good and extirpation of evil. Islam seeks to make the individual feel obligated to straighten, as far as possible, every crookedness and to stand as a dependable watchman charged with the duty to constantly prevent evil from making inroads in the life of the community. The Prophet (peace be on him) explained this by means of a parable. He likened the members of a community to the passengers of a ship, some of whom were allotted in it the upper, and others the lower deck. Whenever those in the lower deck needed water, they could acquire it only if they took the trouble of going up. To avoid this annoyance they decided to make holes in the boat and get water from it instead, without taking the trouble to climb up to the upper deck. Now, if those on the upper deck let these passengers continue to do so, all passengers would perish; if they restrain them, all would survive.[55]

The responsibility of individuals also varies with, and corresponds to, their abilities and social standing. The Prophet says: "Each one of you is a shepherd, and each of you is responsible for his flock".[56] Responsibility also varies with the kind of flock that is under the care of an individual. Islamic

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[54] See Ibn Ḥajar al-Haythamī, *Majma' al-Zawā'id* (Beirut: Dār al-Kitāb al-'Arabī, 1407 AH), 1: 19.

[55] Muslim ibn al-Ḥajjāj, *Ṣaḥīḥ Muslim*, Kitāb al-Birr, Bāb Taḥrīm al-Ẓulm.

[56] Muḥammad ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukharī*, Kitab al-Jumu'ah, Bāb al-Jumu'ah fī 'l-Qurā wa al-Mudun.

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society not only imposes varying degrees of responsibility on the individuals; it also imposes on the community responsibilities both towards the individual and the community. This last one is a tremendous responsibility which, if neglected, incurs the wrath of God. The Prophet (peace be on him) said: "When a person spends his night in hunger in the midst of the people of a locality, God disclaims all responsibility towards those people".[57] Islam also introduced the system of collective criminal liability if a person dies of hunger by making that particular community pay blood-money (*diyah*).[58] This ordinance, issued by 'Umar ibn al-Khaṭṭāb, merits serious reflection.

The idea that the community as a whole has a collective responsibility towards itself is clear in the above-mentioned parable of the passengers of a ship. It is also evident from God's law that when a section of the population commits transgression, all are destroyed those who were actively engaged in transgression and those who kept quiet in face of that transgression.

Let us illustrate this by another example. As we all know, a community as a whole needs a variety of services such as those of physicians, engineers, jurists, economists, and so forth. Since these professions are needed by the community, the acquisition of these sciences and skills is a collective obligation (*farḍ bi al-kifāyah*) of the community. This means that if some members of the community perform this obligation the community is absolved of that duty. But if none fulfils it, all would be held blameworthy and the community as a whole would suffer.

IX

SOCIAL SECURITY

In pre-Islamic times, man's record was largely tarnished by corruption and selfishness. One sees people ruthlessly pursuing material interests and plundering others to enrich themselves. As for the poor and the weak, their lot was that of hunger and suffering, and their bemoaning was either greeted with whips and lashes, or by cold indifference and apathy. For generations after generations none made any concerted effort to provide relief or solace to these miserable 'have-nots' except the followers of other religious or philosophical creeds. Then came Islam with its advocacy of social security and

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[57] Aḥmad ibn Ḥanbal, *Musnad Aḥmad*, Kitāb Musnad al-Mukthirīn min al-Ṣaḥābah, Bāb Musnad 'Abd Allāh ibn 'Umar, 2: 33.

[58] This was found to be true for a person killed under unknown circumstances near a village. See Shāh Walī Allāh, *Risālah dar Madhhab-i Fārūq-i A'ẓam*, trans., Abū Yaḥyā Imām Khān Nawshahrawī (Lahore: Idarah-'i Thaqāfat-i Islāmiyyah, 1952), 237. [Ed.]

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made it a tangible reality by obligating the state to finance it from its resources. This was a great moment for humanity — the moment when man saw, with startled eyes, a dream come true and people found themselves in a state free from misery and injustice. The oppressed and the weak became leaders of mankind and rulers of the world. Unfortunately, this ideal state of affairs did not last long. Islam encountered a number of setbacks. Many of its teachings, including those concerning social security, were rendered inoperative in a substantial portion of its history.

In the modern age, however, the idea of social security has surfaced in many developed nations. Many countries have tried to vie with each other in trying to implement this idea so much so that social security has become one of the popular catchwords of this age. The idea has even come to be embodied in Article 25 of the Charter of Human Rights which reads: "... [everyone] has the right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond his control".[59]

A great deal of disagreement arises, however, on practical questions regarding the implementation of the idea of social security. One of the known forms of social security is social insurance. In this system, compulsory deductions are made from the earnings of workers and professional people and are deposited in a reserve fund, and to this fund is added the contribution of the state. Out of this fund the people concerned are paid in time of need. This, however, does not cover all citizens; it is rather confined only to the working people. Another form of social security for workers consists of special funds organized by private companies to which the employees contribute. Furthermore, there are special funds drawn from the contributions of the wage-earners and the profits of the employers, and these are used to provide security against disability and old age. There is also insurance backed by the employers' guarantee to the workers in case of sickness or accident or unemployment. All the above mentioned provisions provide security to only some sections of the community. Consequently, the trend of modern legislation is towards a new form of security which is required to be shouldered completely by the state. The state enacts it, finances it, and sees to it that it is applied in order to provide financial assistance to those who are in actual need, and who receive it as their right rather than as dole.

[59] Paul Sieghart, *The International Law of Human Rights* (Oxford: Clarendon Press, 1983), 193, Article no. 25. It is the last half of the Article 25, the first part reads: 25 (1) "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security...".

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The first step towards social security in Islam is the enunciation of the idea that one is required to work, and that idleness and parasitism are to be shunned. Begging is prohibited unless it be by the disabled or utterly needy persons who have no means to make both their ends meet. To these provisions Islam adds two complementary factors to implement its programme of social security, namely, urging people to charity and benevolence. After all this the state steps in to support the needy.

The principle of social security became an established principle during the life of the Prophet (peace be on him). The widow of Ja'far ibn Abī Ṭālib once came to talk to him about the orphanhood of her children. The Prophet (peace be on him) said to her: "Why should you be worried about them, when I am responsible for them ...?"[60]

The second Caliph, 'Umar b. al-Khaṭṭāb, consolidated the bases of a system of social security in a manner that will become clear in the light of the practical examples that we shall cite. By the time of Caliph 'Umar b. 'Abd al-'Azīz, we find that the system had reached its apogee, and people had become so prosperous that government officials would go around to distribute *zakāh* and would find none to accept it. In this regard Yaḥyā b. Sa'īd, whom 'Umar had put in charge of the alms in Ifriqiyyah, states that after collecting the alms he found no poor and none was prepared to accept them since 'Umar b. 'Abd al-'Azīz had made everybody free from need. Hence, the *zakāh* funds were used to pay for the emancipation of slaves.[61]

Social security regulations in our time are geared to meeting three kinds of contingencies to which people are exposed. They are: (1) physical contingencies such as sickness, disability, and old age; (2) occupational contingencies which consist of total or partial disability caused by, and during, the professional work of the workers, and (3) family contingencies, which involve bearing the burden of a very large family with insufficient means.

To see how Islam met these contingencies, we shall study carefully the letter sent by the Caliph 'Alī to his governor in Egypt. In this letter he said:

> Fear God about the lowest class in society, who are helpless, poor, needy, miserable, bed-ridden, meek and penniless. You are responsible to God, because he entrusted them to your care. Give them a portion out of the treasury and a portion out of the summer tribute in every country, for those who are far away should receive as much as those who are close. You should give each his due, and the consideration that some people are for below your rank and dignity should not be your excuse. You will not be absolved for having ignored minor matters

[60] See Aḥmad ibn Ḥanbal, *Musnad Aḥmad*, Kitāb Ahl al-Bayt, Bāb ḥadīth 'Abd Allah ibn Ja'far ibn Abī Ṭālīb, 1: 204–5.

[61] See 'Abd al-Salām Nadvī, *'Umar B. 'Abd al-'Aziz*, trans. M. Hadi Hussain (Lahore: Institute of Islamic Culture, 1978), 174.

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> on the plea that you concentrated on the more important matters. Therefore, you should not turn your attention away from those people and act haughtily towards them. Look into the affairs of those who are despised since they cannot even have access to you. Appoint from among those whom you trust the ones who are humble and God-fearing in order to place the affairs of these people before you. Pay good attention to the helpless orphans and those of tender age who would never allow themselves to beg. This is a heavy burden on a governor. Indeed it is a heavy burden.[62]

To examine the practical application of this principle in Islamic history, I will review some of the contingencies which Islam encountered in its drive to establish social justice and to protect the individual from poverty and need.

Family and Widowhood

In grappling with this problem, Islam displayed great sensitivity and concern. It would suffice in this connection to relate the incident during the caliphate of 'Umar ibn al-Khaṭṭāb. 'Umar came to know that a child was being weaned by the mother because the state did not provide for his suckling, and because by so doing the mother would be able to get the ration of the weaned and thus would receive some financial relief. 'Umar publicly denounced himself for his earlier policy and sent for a herald to announce: "Don't hasten to wean your children, for we will provide for every new-born in Islam".[63] The incident of another mother and her young children during his caliphate is also well-known. 'Umar was passing by and found that a woman had lit fire and had placed on it a kettle with only water and pebbles in it to pacify her children until they fall asleep. 'Umar was horrified at knowing this. He personally brought to them food from the government store-house; cooked it himself, and fed the children until they had had their fill.[64] As for the widows, I have already mentioned the statement of the Prophet (peace be on him) to the widow of Ja'far: "Why should you be worried about them when I am responsible for them ... ?"[65]

Old Age and Sickness

In addition to 'Alī's letter cited earlier, the following examples from 'Umar's caliphate are relevant to illustrate the kind of security which should be provided to the old and the sick.

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[62] See Muḥammad Muḥyī 'l-Dīn 'Abd al-Ḥamīd, ed., *Nahj al-Balāghah*, 3: 111–2.
[63] Muḥammad Ḥusayn Haykal, *al-Fārūq 'Umar*, 215.
[64] 'Abd al-Raḥmān ibn 'Alī ibn al-Jawzī, *Ta'rīkh 'Umar ibn al-Khaṭṭāb* (Cairo: al-Maṭba'ah al-Miṣriyyah, n.d.), 59–60.
[65] See, n. 60 above.

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'Umar once saw a blind old Jew begging. On inquiry he came to know that he was begging in order to pay the capitation tax, and because he faced financial duties in his old age. 'Umar not only instantly provided him with his requirements, but also instructed the treasury officer to look after him and his like. He declared: "By God, we would not be fair if we were to collect taxes from him when he is young, and disgrace him when he is old".[66] 'Umar exempted the age-stricken people, and others similar to them, e.g. the sick and the disabled, from the payment of capitation tax and also fixed stipends for them from the public treasury.[67] Thus the requirements of justice and public welfare of all citizens were met, be they Muslims or non-Muslims.

Motherhood

As usual, 'Umar strikes us for his deep concern to provide for the contingencies which face mothers. He was once making rounds at night and heard the cries of a woman in labour. He went home and fetched his wife. While his wife was busy helping the woman in the delivery of her child, 'Umar prepared the food and gave it to the woman and her husband to eat. 'Umar then left for home, ordering the husband to report to him in the morning. When he came, 'Umar got a stipend fixed for him[68]

These instances of compassion and concern illustrate the extent to which Islam seeks to solve the problems of mankind. Had Muslim societies moved continually in the same direction, the situation of the Muslims today would have been quite different. They, however, suffered several setbacks in the course of their history which deprived them both of the motivation and the material resources which could have enabled them to perform better.

X

THE ISLAMIC SYSTEM OF SOCIAL SECURITY

In the systems of social security in vogue in our time every individual is required to contribute a part of his earnings to be able to benefit from that arrangement. In the Islamic system of social security it is the public treasury which is required to finance the whole scheme of social security, which undertakes to provide for the needs of its citizens, without necessarily

[66] See Abū Yūsuf, *Kitab al-Khirāj*, 126.
[67] 'Allāma Shiblī Nu'mānī, *al-Farūq*, tr., Muhammad Saleem, *Omar the Great* (Lahore: S.M. Ashraf, 1957), 2: 174.
[68] Ibn al-Jawzī, *Ta'rīkh 'Umar*, 73–74.

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requiring them to contribute to the social security fund. This was done by the following means:

Zakāh

This is a well-known religious obligation and is one of the five pillars of Islam. As defined by the Qur'ān, it must be spent on: "The offerings given for the sake of God are [meant] only for the poor and the needy, and those who are in charge thereof, and those whose hearts are to be won over, and for the freeing of human beings from bondage, and [for] those who are over-burdened with debts, and [for every struggle] in God's cause, and [for] the wayfarer" (9: 60). Some of the items such as "those whose hearts are to be won over", and "for the freeing of human beings from bondage" have now become obsolete. Thus, the income from *zakāh* entering into the public treasury is actually for the purpose of financing the requirements of social security. This is what has actually been done in a few Islamic countries such as Saudi Arabia and Pakistan. (A Royal Decree was issued ordering the collection of *zakāh* to be deposited in the account of the Social Security Organisation rather than in the state treasury. The Organisation spends these funds, together with the supplementary amounts contributed by the state, for social security purposes in accordance with the relevant regulations).

Voluntary Donations

This is a supplementary source for financing social security which is distinct from *zakāh*. Spending money to help those in need has been frequently stressed both in the Qur'ān and the *Ḥadīth*. He who spends in order to help the widow and the needy has been declared to be like the fighter in the cause of God.[69] The person who feeds an orphan to his fill has been declared as one deserving paradise.[70] As long as the true Islamic spirit is alive in any society, its members will necessarily spend part of their wealth voluntarily to assist those in need. Out of these funds charitable foundations (*awqāf*) may be established, as was done in the past; or these funds may be placed by the donors at the disposal of the state to use it to provide social security to those in need, or be made available to charitable societies.

Levies

This is a means to which a Muslim ruler might have recourse, but not in all contingencies. The Mālikī school has invoked it on the basis of the theory of public interest. When the treasury becomes empty, or when revenues from the ordinary sources are not enough to meet the requirements of maintaining a

[69] Muḥammad ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Kitāb al-Adab, Bāb al-Sā'y 'alā al-Armalah.
[70] Ibid., Kitab al-Ṭalāq, Bāb al-Li'ān.

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strong army, the Muslim ruler has the right to levy extraordinary taxes on the rich. He may also impose a levy during siege or at harvest time. It has not been provided, however, for the ruler that he may borrow. The famous jurist Shāṭibī has said: "Borrowing during a crisis may be resorted to when the treasury expects some income in the near future. However, if no money is expected, and the sources of income become insufficient, levies are inevitable".[71] Thus the ruler, according to the theory of public interest propounded by the Mālikī jurists, has the right to establish some additional source for financing social security, in case the other two sources, namely *zakāh* and voluntary donations, are insufficient to meet the needs of the society.

XI

CONCLUSION

It would be quite evident from the foregoing to what extent Islam concerns itself with social justice. As we have noted, in Islam property and other rights of individuals are protected and respected provided they are exercised in a manner which is beneficial to them but, at the some time, not prejudicial to the interests of the community. Islam has firmly secured property against usurpation, theft and confiscation. It has also obligated the owners of properties not to deviate from the purposes for which the right of property was granted. In short, Islam attempts to combine the freedom and dignity of the individual and the broader interests of the community. In this connection an Islamic state should provide social security to each individual in the event of unemployment, sickness, disability, widowhood, old age, and in any other contingency which leads to involuntary loss of one's source of livelihood.

The dire need of the present-day Islamic world seems to be to develop a vivid awareness of the richness of our heritage and a robust confidence in the continuing validity of the teachings of Islam. The more we study the social experiments of other societies, the more we become confident that the principles taught by Islam are the best source of guidance in our striving to establish a good, just and progressive society. A major challenge that the contemporary times have thrown to the Muslims is: are they capable of transforming their principles into practical programmes, their ideals of justice into viable economic plans, and do they have the energy and the drive needed to translate their ideals into concrete realities of life? To a large extent, the future of the Muslim world will depend on how it responds to this challenge.

[71] See Muhammad Khalid Masud, *Shāṭibī's Philosophy of Islamic Law* (Islamabad: Islamic Research Institute, 1995), 94.

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